STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED September 13, 2005
v	No. 253271 Wayne Circuit Court
LOUIS ALEX TOKIE, Defendant-Appellant.	LC No. 03-009973-02

Before: Whitbeck, C.J., and Sawyer and Fitzgerald, JJ.

PER CURIAM.

Defendant Louis Tokie appeals as a matter of right from his conviction for receiving or concealing stolen property with a value of $200 or more but less than $1,000.[1] We affirm. We decide this appeal without oral argument pursuant to MCR 7.214(E).

I. Basic Facts And Procedural History

Tokie was arrested in Oakland County after a traffic stop during which police discovered that he had an active warrant for a parole violation.[2] An inventory search of Tokie's vehicle found numerous tools, including three bolt cutters, a pry bar and a screwdriver, as well as camping and other outdoor items. The police also discovered a box with the name and address of a business in Livonia, Wayne County on it. Shortly after Tokie's arrest, Farmington Hills and Livonia police met at the business and determined that a storage shed had been burgled. Subsequently, the business owner contacted the police and identified the box and many of the camping and outdoor items recovered from Tokie's van as the business owner's property.

Tokie was charged with one count of breaking and entering a building with intent to commit larceny, and one count of receiving and concealing stolen property. Tokie moved to dismiss the receiving or concealing stolen property charge, arguing that because that offense took place exclusively in Oakland County, Wayne County did not have jurisdiction to prosecute him;

[1] MCL 750.535(4)(a).

[2] The fact of Tokie's active warrant for a parole violation was elicited during the preliminary examination, but Tokie successfully moved for its suppression at trial.

however, the trial court denied the motion. After a trial, the jury acquitted Tokie of breaking and entering, but convicted him of receiving and concealing stolen property.

II. Double Jeopardy

A. Standard Of Review

We review de novo claims relating to double jeopardy.[3] Because Tokie did not raise the double jeopardy issue at trial, to merit reversal on appeal, he must show that: (1) an error occurred, (2) the error was plain, i.e., clear or obvious, and (3) the plain error affected his substantial rights.[4] Reversal is warranted only when the Court, in its discretion, determines that the plain error resulted in the conviction of an actually innocent defendant or when it seriously affected the fairness, integrity, or public reputation of the judicial proceedings, independent of the defendant's actual innocence.[5]

B. Application Of Double Jeopardy Protections

Both the United States and Michigan Constitutions prohibit placing a defendant twice in jeopardy for a single offense.[6] "The prohibition against double jeopardy provides three related protections: (1) it protects against a second prosecution for the same offense after acquittal; (2) it protects against a second prosecution for the same offense after conviction; and (3) it protects against multiple punishments for the same offense."[7]

Tokie argues that his "double jeopardy right not to be properly prosecuted twice for the separate crimes was violated," which implicated his right against successive prosecutions. This argument is simply inapplicable, because Tokie was only prosecuted once for each crime, and Tokie does not argue that the two crimes were identical – indeed, he specifically states that they "were two separate and distinct crimes." Stated another way, there was one prosecution of two separate offenses, not a second prosecution of one offense. Accordingly, double jeopardy concerns were not implicated.

C. *People v Nutt*

Tokie further argues that "[i]t was illegal to prosecute these offenses separately in the same county because Mr. Tokie did not satisfy all of the requirements of the 'same elements' test" that the Michigan Supreme Court re-adopted in *People v Nutt*.[8] Tokie's argument betrays a

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[3] See *People v Pena*, 224 Mich App 650, 657; 569 NW2d 871 (1997), modified on other grounds 457 Mich 885 (1998).

[4] *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

[5] *Carines*, *supra*; *People v Kulpinski*, 243 Mich App 8, 11-12; 620 NW2d 537 (2000).

[6] US Const, Am V; Const 1963, art 1, sec 15; *People v Herron*, 464 Mich 593, 599; 628 NW2d 528 (2001).

[7] *People v Nutt*, 469 Mich 565, 574-575; 677 NW2d 1 (2004); *Herron*, *supra*.

[8] See *Nutt*, *supra*.

misunderstanding of the purpose of the same-elements test, which is used to determine whether a defendant may be successively prosecuted for two or more crimes without violating the double jeopardy protection against being prosecuted twice for the same offense.[9] In *Nutt*, for example, the Court held that Oakland County could prosecute a defendant for possessing stolen firearms, even though she had already been convicted of second-degree home invasion in Lapeer County, without violating her double jeopardy protections, because these two crimes did not share the same elements.[10] However, the fact that it was constitutionally permissible to allow *successive* prosecutions of two crimes with different elements in two *different* counties has no bearing on whether there may be a *single* prosecution of two crimes with different elements in the *same* county. In sum, we are at a loss to understand how *Nutt* aids Tokie's case.

In our view, Tokie's argument appears to be little more than an attempt to resuscitate, in the guise of a double jeopardy claim, his pretrial argument that Wayne County did not have jurisdiction – or, stated properly, was not the proper venue – to try him for receiving and concealing stolen property. However, nothing in the state or federal double jeopardy clause, or in *Nutt*, prohibited Wayne County from trying Tokie for both the offenses with which he was charged. Because these were the only claims Tokie raised in the question he presented on appeal, our analysis need go no further.[11]

Affirmed.

/s/ William C. Whitbeck
/s/ David H. Sawyer
/s/ E. Thomas Fitzgerald

[9] See *id*. at 567-568.

[10] See *id*. at 592-593.

[11] See *People v Brown*, 239 Mich App 735, 748; 610 NW2d 234 (2000).